

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**ATTACHMENT NO. 3****INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 25, Sections 3650 and 3664
of the General Industry Safety Orders

Operating Rules for Industrial Trucks**SUMMARY**

On December 29, 1999, the Occupational Safety and Health Standards Board (Board) received a memorandum with attachments from the Division of Occupational Safety and Health (Division) requesting an amendment to Section 3664 regarding operating rules for industrial trucks (fork lifts) and industrial tow tractors. The Division stated that each year many accidents occur because the operating rules listed in Section 3664 are not followed. Because Section 3664 only states that the employer is required to "post and enforce" the operating rules, the Occupational Safety and Health Appeals Board has consistently ruled that the individual rules are not considered regulations and, therefore, cannot be cited as such. Because of these rulings, the Division can only issue a regulatory or general citation to the employer for failure to post and/or enforce the operating rules irrespective of the seriousness of the injury or death resulting from the failure to follow the operating rules. The Division asserts that enforcing the operating rules will reduce the number of accidents associated with forklift use. Standard Board staff agrees with the Division that there is a need to amend Article 25 in order to clarify that all the operating rules for industrial trucks as currently listed in Section 3664(a) are regulatory requirements.

On February 20, 2001, the Board received a petition from Mr. David A. Caldwell (Petitioner), OSHSB Petition File No. 429, requesting amendments to the forklift and loading dock regulations of the General Industry Safety Orders to ensure the safe use of forklifts during loading dock operations. The Division evaluated the Petitioner's request and recommended, among other things, to move the operating rules that are currently listed in 3664(a)(1) through 3664(a)(32) into Section 3650. The Standards Board staff concurs with the Division because by placing the operating rules in Section 3650 the operating rules become individually enforceable and make Sections 3650 and 3664 at least as effective as Federal OSHA's counterpart regulations in 29 CFR 1910.178(m), (n), (o), and (p). This proposed rulemaking based on the recommendation in the Division's petition evaluation report will have the same effect as the recommendation received

December 22, 1999 from the Division to define the operating rules as safety orders. The Board staff discussed and received concurrence from the Division to change the Division's request of December 22, 1999.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This proposed rulemaking action contains nonsubstantive revisions. These nonsubstantive revisions consist of renumbering subsections and parts consistent with Title 8 format and are not all discussed in this document. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Article 25. Industrial Trucks, Tractors, Haulage Vehicles, and Earthmoving Equipment

Section 3650. Industrial Trucks. General.

Section 3650 contains requirements regarding the design and construction standards for labeling indicating conformance to NFPA, ANSI, UL and/or ASME standards, and for the safe operation of industrial trucks.

The proposed rulemaking amends GISO Section 3650 "*Industrial Trucks. General.*" by adding subsection "(s)" and the wording "Industrial trucks and tow tractors shall be operated in a safe manner consistent with the following operating rules:" The proposed rulemaking adds the 32 operating rules that are currently listed in Section 3664(a) to Section 3650(s) as (1) through (32).

Section 3664. Operating Rules.

Section 3664(a) states that the employer must post and enforce the operating rules for industrial trucks and contains the operating rules under 3664(a)(1) through 3664(a)(32).

The intent of this section is to have employees comply with the operating rules by requiring that the employer "post and enforce" the operating rules. However, the Occupational Safety and Health Appeals Board has consistently ruled that the operating rules are not regulations and that breaking a rule alone does not constitute grounds for a violation of Section 3664(a). (See the Decision after Reconsideration (DAR) Docket No. 85-R3D4-193, December 17, 1985 and DAR Docket No. 79-R2D5-131, July 30, 1984.) Because of these rulings the enforcement of the individual operating rules by the Division is not possible.

The proposed rulemaking amends GISO Section 3664(a) by changing the wording to read: "Every employer using industrial trucks or industrial tow tractors shall post and enforce a set of operating rules including the appropriate rules listed in Section 3650(s)." The proposed rulemaking transfers the 32 operating rules that are listed in Section 3664(a)(1) through 3664(a)(32) to Section 3650(s). The proposed revision does not change any regulatory requirements because it maintains the employer requirement to post and enforce the operating rules in Section 3664(a).

These amendments are necessary to clarify that the operating rules are safety orders and to render Sections 3650 and 3664 at least as effective as Federal OSHA counterpart regulations in 29 CFR 1910.178(m), (n), (o), and (p).

The scope of this rulemaking only addresses making the operating rules currently found in Section 3664 enforceable and in that sense at least as effective as the Federal OSHA's counterpart requirements. This rulemaking is undertaken with the assumption that earlier rulemaking addressed the issue of the operating rules being at least as effective as the Federal OSHA's counterpart requirements.

DOCUMENTS RELIED UPON

Memorandum with attachments to John MacLeod, Executive Officer, Occupational Safety and Health Standards Board dated April 17, 2001 from John Howard, Chief, Division of Occupational Safety and Health.

OSHSB Petition File No. 429 from Mr. David A. Caldwell dated February 18, 2001.

Memorandum with attachments to John MacLeod, Executive Officer, Occupational Safety and Health Standards Board dated December 22, 1999 from John Howard, Chief, Division of Occupational Safety and Health.

Decision After Reconsideration, Docket No. 85-R3D4-193, December 17, 1985.

Decision After Reconsideration, Docket No. 79-R2D5-131, July 30, 1984.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The requirements and intent, to comply with the operating rules, of both the proposed Sections 3650 and 3664 and the current Section 3664 are identical.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.